

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of JOHNETTA C. ANDERSON and U.S. POSTAL SERVICE,
POST OFFICE, Shreveport, La.

*Docket No. 96-2595; Oral Argument Held May 7, 1998;
Issued August 12, 1998*

Appearances: *Johnetta C. Anderson, pro se; Sheldon G. Turley, Jr., Esq.,
for the Director, Office of Workers' Compensation Programs.*

DECISION and ORDER

Before GEORGE E. RIVERS, MICHAEL E. GROOM,
BRADLEY T. KNOTT

The issue is whether the Office of Workers' Compensation Programs properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

On November 21, 1992 appellant, a 38-year-old letter sorting machine operator, sustained injuries as a result of a fall on an uneven part of the sidewalk on the premises of the employing establishment. Appellant did not stop work, but the next day, she sought treatment from an emergency facility, where she was diagnosed by Dr. Nita Bratton, a Board-certified internist, as having sustained a wrist and knee sprain. One month later she came under the care of orthopedic surgeons at Orthopedic Specialists of Louisiana, where she was initially evaluated by Dr. David Waddell, a Board-certified orthopedic surgeon. Appellant was diagnosed with a subluxation of the first carpal/metacarpal (cmc) joint and with degenerative joint disease of the right knee based on x-rays of the knee.

The Office accepted appellant's claim for strains of the right wrist and right knee.

Appellant continued to seek treatment for her knee and right wrist symptoms. She was subsequently diagnosed with bilateral carpal tunnel syndrome, for which she filed a separate occupational disease claim, developed by the Office under claim number A16-229130.¹ In mid-January 1993 appellant was referred to physical therapy by Dr. Millstead, a Board-certified orthopedic surgeon and associate of Dr. Waddell's. She stopped work for six weeks in the spring of 1993 and returned to work in a limited-duty position on April 1, 1993 based on Dr. Waddell's work restrictions. In June 1993 Dr. Millstead indicated that appellant's wrist strain had resolved, and that she continued to have osteoarthritic pain which preexisted the fall

¹ The record indicates that appellant's claim for bilateral carpal tunnel syndrome was approved by the Office.

and was unrelated to the fall. Based on his report, the Office terminated benefits for continued treatment of the wrist condition. In a subsequent report, Dr. Millstead related appellant's osteoarthritis in her CMC joint as a probable consequence of both her employment duties and fall.

In the fall of 1993 and the summer of 1994, appellant obtained treatment from Dr. Christopher D. Burda, a rheumatologist. Dr. Burda reported appellant's symptoms of numbness and tingling of the knees, as well as symptoms of the wrist.

Based on work restrictions by Dr. Waddell provided on August 23, 1994, appellant was assigned to a new job as a modified general clerk beginning August 26, 1994. Appellant worked for two and a half weeks and stopped work on September 11, 1994. In a form report dated November 2, 1994, Dr. Burda noted the lack of evidence of a preexisting condition and indicated by check mark that the condition was due to the fall at work.

By letter dated December 6, 1994, the Office requested a supplemental report from Dr. Burda providing his rationale for his opinion on causal relationship.

By decision dated January 10, 1995, the Office denied appellant's claim for continued medical benefits on the grounds that the medical evidence did not establish a causal relationship between appellant's continued knee condition and her November 21, 1992 employment injury.

Through a request for written review, appellant submitted additional reports from Dr. Burda. In his February 7, 1995 report, Dr. Burda diagnosed chondromalacia of the knee caused by the fall, and he stated that the fall exacerbated, aggravated and worsened degenerative changes. He noted that a knee injury like the one sustained by appellant often causes both direct and consequential damage. Dr. Burda also addressed appellant's carpal tunnel syndrome as employment related. He stated that appellant was totally disabled from work. In reports dated January 23, 1995 and August 19, 1996, Dr. Burda addressed appellant's continued symptoms of the wrist.

By decision dated July 27, 1995, an Office hearing representative found that the evidence was insufficient to establish a causal relationship between appellant's continued knee condition complaints and her employment-related fall on November 21, 1992.

Appellant requested reconsideration of the Office's decision by letter dated November 8, 1995. She submitted a prior report dated January 23, 1995. In addition, she submitted additional reports dated February 13, April 3, July 10, August 14, and September 18, 1995, in which Dr. Burda addressed appellant's continued wrist and thumb symptoms. Appellant also submitted a September 7, 1995 report, in which Dr. Burda diagnosed "carpal tunnel syndromes and degenerative joint disease of the knees precipitated and aggravated by her occupational injury as indicated in my reports with sufficient medical evidence manifested by patellofemoral crepitation, swelling, and pain and stiffness of the knees, as well as numbness and tingling of the fingers and hands." He stated that the positive Tinel's and Phalen's signs were corroborated by positive conduction studies and x-ray findings. Dr. Burda noted that appellant could not return to work and indicated that he felt the diagnoses were well documented.

By decision dated December 26, 1995, the Office denied review of appellant's claim on the grounds that the evidence was cumulative and insufficient to warrant review.

The Board finds that the Office properly denied appellant's request for reconsideration under 5 U.S.C. § 8128.

Section 8128(a) of the Federal Employees' Compensation Act vests the Office with the discretionary authority to determine whether it will review an award for or against compensation.² The Office, through its regulations, has imposed a one-year time limitation for a request of review to be made following a merit decision of the Office.³ The regulations provide that a claimant may obtain review of the merits of the claim by: (1) showing that the Office erroneously applied or interpreted a point of law, or (2) advancing a point of law or a fact not previously considered by the Office, or (3) submitting relevant and pertinent evidence not previously considered by the Office.⁴ When application for review of the merits of a claim does not meet at least one of these three requirements, the Office will deny the application for review without reviewing the merits of the claim.⁵ Evidence that repeats or duplicates evidence already in the case record has no evidentiary value and does not constitute a basis for reopening a case.⁶ Evidence that does not address the particular issue involved also does not constitute a basis for reopening a case.⁷ Where a claimant fails to submit relevant evidence not previously of record or advance legal contentions not previously considered, it is a matter of discretion on the part of the Office to reopen a case for further consideration under section 8128 of the Act.⁸

Appellant has not submitted any new or relevant evidence to explain how the fall at work on November 21, 1992 caused or aggravated a knee condition other than a strain. The Board notes that while Dr. Burda restated his opinion on causal relationship in his September 7, 1995 report, he did not provide any further rationale than his stated conclusion. He noted that he felt both carpal tunnel syndromes and degenerative joint disease of the knees were well-established diagnoses and he indicated that the continued symptoms were evidence of the precipitation or aggravation from the fall at work. The Board notes that the issue before the Office was limited to the knee injury, as appellant's claim for carpal tunnel syndrome was developed separately under a separate claim. With respect to the knee injury, Dr. Burda provided no additional rationale than was previously provided, to explain how the fall, accepted for a knee strain, caused, aggravated or precipitated the condition of chondromalacia or the degenerative changes. Based on the repetitive nature of the additional evidence submitted, and the lack of other

² 5 U.S.C. § 8128; *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

³ 20 C.F.R. § 10.138(b)(2).

⁴ 20 C.F.R. § 10.138(b)(1).

⁵ *Id.* § 10.138(b)(2).

⁶ *Eugene F. Butler*, 36 ECAB 393, 398 (1984); *Bruce E. Martin*, 35 ECAB 1090, 1093-94 (1984).

⁷ *Edward Matthew Diekemper*, 31 ECAB 224 (1979).

⁸ *Gloria Scarpelli-Norman*, 41 ECAB 815 (1990); *Joseph W. Baxter*, 36 ECAB 228 (1984).

evidence of an erroneous application or interpretation of a point of law or point of law or a fact not previously considered, the Board finds that the Office properly denied appellant's request for a review of his case.⁹

The decision of the Office of Workers' Compensation Programs dated December 26, 1995 is hereby affirmed.

Dated, Washington, D.C.
August 12, 1998

George E. Rivers
Member

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

⁹ The Board notes that while appellant requested "review" of the December 26, 1995 decision by listing the avenues of review available to her, and was subsequently informed by the Office that her request for review was forwarded to the Board, the Board is not permitted to recognize the Office's letter as a request for an appeal filed before the Board.